

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NATHAN BROWN,

Plaintiff,

-v.-

9:07-CV-0480
(LEK)(DEP)

DALE ARTUS, Superintendent; LINDA TURNER, Deputy
Superintendent; R.J. MINOGUE, Captain; JOHN DOE,
Corrections Sergeant; JOHN DOE, Corrections Officer;
and JOHN DOE, Corrections Officer,

Defendants.

APPEARANCES:

OF COUNSEL:

NATHAN BROWN, *pro se*

OFFICE OF THE ATTORNEY GENERAL
State of New York
The Capitol
Albany, NY 12224
Counsel for Defendants

CHRISTINA L. ROBERTS-RYBA, Esq.
Assistant Attorney General

DAVID E. PEEBLES, U.S. MAGISTRATE JUDGE

DECISION AND ORDER

Plaintiff has filed a motion to compel discovery pursuant to Rule 37 of the Federal Rules of Civil Procedure. Dkt. No. 38. Plaintiff has also submitted a motion to amend his complaint. Dkt. No. 41.

I. Motion to compel

Plaintiff seeks to compel a response to his Fourth Request for Production of Documents dated December 19, 2007. Dkt. No. 38 at 3, 7. Defendants oppose plaintiff's motion as moot. Defendants indicate that they have now responded to all of plaintiff's Fourth Request for Production of Documents. Dkt. No. 39 at ¶ 4-5. Defendants indicate that "[d]ue to the fact that plaintiff's fourth set for a production of documents was attached to a letter he submitted to the court requesting

an extension of time to file an Amended Complaint, the fourth set was inadvertently unnoticed.” *Id.* at ¶ 3. Defendants have provided the Court with copies of their responses as well as copies of the documents provided to plaintiff. *Id.* at 39-2 and 39-3. Plaintiff has not taken exception to defendants’ assertion that they have responded to plaintiff’s discovery requests. Additionally, I have reviewed defendants’ responses in conjunction with the discovery requests and find that defendants have substantially complied with the proffered discovery. Plaintiff’s motion to compel is therefore denied as moot. *See, e.g., Hamilton v. Poole*, No. 95-CV-239H, 1997 WL 626406, at *6 (W.D.N.Y. Sep. 22, 1997) (denying motion to compel filed by plaintiff where defendants responded to discovery after motion was filed).

II. Motion to amend

Turning to plaintiff’s motion to amend, the proposed amended complaint is substantively similar to the original complaint. The amended complaint, however, substitutes “Darryl Menard” in place of “John Doe, Corrections Sergeant and “Geri Corrigan, Corrections Officer” and “Keith Beeman, Corrections Officer” in place of the two unidentified defendants each designated on the docket as “John Doe, Corrections Officer.” *Compare* Dkt. No. 1 *with* Dkt. No. 41.

Plaintiff’s motion to amend (Dkt. No. 41) is GRANTED.

WHEREFORE, it is hereby

ORDERED, that plaintiff’s motion to compel (Dkt. No. 38) is DENIED as moot, and it is further

ORDERED, that plaintiff’s motion to amend (Dkt. No. 41) is GRANTED. The amended complaint, which shall supersede and replace *in toto* the complaint filed herein, must be signed by plaintiff and shall be filed with the Court, if at all, **within thirty (30) days** of the filing date of this

Order,¹ and it is further

ORDERED that upon receipt and filing of plaintiff's signed amended complaint, the Clerk is directed to amend the docket to replace "John Doe, Corrections Sergeant," "John Doe, Corrections Officer," and "John Doe, Corrections Officer," with "Darryl Menard, Corrections Sergeant," "Geri Corrigan, Corrections Officer," and "Keith Beeman, Corrections Officer" respectively, and it is further

ORDERED, that plaintiff provide the Court with sufficient copies of his amended complaint and completed USM-285 forms for service on the newly named defendants Menard, Corrigan, and Beeman, and it is further

ORDERED, that the Clerk issue summonses and forward them, along with copies of the amended complaint, to the United States Marshal for service upon defendants Menard, Corrigan, and Beeman, and it is further

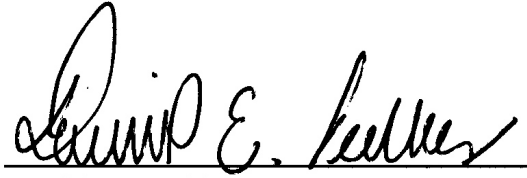
ORDERED, that plaintiff serve a signed copy of the amended complaint on opposing counsel **within thirty (30) days** of the filing date of this Order, and it is further

ORDERED, that a formal response to plaintiff's amended complaint be filed by the defendants or their counsel as provided for in Rule 12 of the Federal Rules of Civil Procedure, and it is further

ORDERED, that the Clerk serve a copy of this Decision and Order on the parties in accordance with the Local Rules. The Clerk shall also provide plaintiff with a complimentary copy of his proposed amended complaint so that he can sign it and return it to the Court for filing.

¹ The proposed amended complaint submitted by plaintiff along with the present motion shall **not** be filed by the Clerk as the amended complaint herein. Plaintiff must mail to the Clerk a signed copy of the amended complaint for filing.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "David E. Peebles", is written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

Dated: June 2, 2008
Syracuse, New York